

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Accelerating Wireless Broadband Deployment by)	WT Docket No. 17-79
Removing Barriers to Infrastructure Investment)	
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)	

REPLY COMMENTS OF:

Chippewa Cree Tribe

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July 17, 2017

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C., 20554
Via: ECFS

Dear Ms. Dortch,

RE: WT Docket No. 17-79 Reply comments to Comments submitted by CTIA & WIA, Sprint, and Verizon.

Thank you for the opportunity to submit reply comments to the joint comments submitted by the Wireless Infrastructure Association (WIA) and the Cellular Telecommunication Industry Association (CTIA), as well as Sprint, and Verizon regarding the Notice of Proposed Rulemaking WT 17-79 on the “Accelerating wireless broadband deployment by removing barriers to infrastructure investment.”

The Chippewa Cree Tribe of the Rocky Boy’s Indian Reservation (“CCT”) has reviewed the comments in the Docket and offers these comments in response to the Industry, as well as provide further suggestions to improve the Tower Construction Notification System (TCNS) process to protect cultural and historic properties through the Section 106 process. The CCT appreciated the opportunity to meet with Chairman Ajit Pai, Federal Communication Commission (FCC) at Mohegan Sun at National Congress American Indian’s Mid-Year Conference during the listening session on the NOPR on June 14, 2017. It was a productive time we spent with you and your staff to discuss the issues, concerns and possible solutions for removing barriers for infrastructure investment and the deployment of wireless broadband deployment broadband in Indian Country.

INTRODUCTION

The CCT has traversed these lands of North America since time immemorial and as a nation, there is a responsibility to our ancestors and the future generations of tribal members to preserve and protect historical and cultural properties that are sacred to this Tribe. The Section 106 review process has allowed the Chippewa Cree Tribe to be a part of the process of remembering areas of significance and to learn of other potential sites that our forefathers walked upon pre-contact. The activities of Industry would not be the first time Tribes have been considered an impediment to the progress and growth in this country. One does not have to look far to remember tribal nations forced removal from their homelands and being placed upon reservations; it seems that history is repeating itself in the context within the wireless communications industry. We as a Tribal nation will not discount industry for their lack of historical knowledge nor respect for culture; rather we will continue to educate them on the importance of Section 106 and the preservation and protection of historical and cultural properties of CCT. The CCT will work with industry and the FCC collaboratively to provide timely, professional work on the Section 106 review process to ensure that broadband deployment is brought to Indian Country and nationwide. FCC as a federal governmental entity has a trust responsibility to Tribes that has been lost in the industry guided proposed rulemaking that has cast Indian Tribes in a negative light. It is imperative that the FCC can delineate what their trust responsibility is to Indian Tribes and how that impacts the Section 106 review process. The Chippewa Cree Tribe offers the following reply comments.

IMPORTANCE OF CULTURAL REVIEWS

Section 106 reviews are determined by individual Tribes based on the cultural history and traditional knowledge passed down in the oral tradition, and the teachings from elders. This information is not widely known of in the non-Tribal culture, and this knowledge cannot be taught or learned by obtaining a degree. The special expertise and information to conduct a Tribal cultural review cannot be replaced or disregarded by Industry as Tribes are the only credible source to identify, evaluate and determine whether a project will have an adverse effect or not to their own cultural sites and areas of significance. This cultural knowledge responsibility is assigned by the Tribal elected leadership to preserve and protect cultural resources. Each Tribe has a process and a unique way to meet that responsibility; some Tribes' formalize the process by the formation of a Tribal Historic Preservation Officer (THPO) signing a partnership agreement with the Department of Interior's National Park Service, or establishing a department, cultural or elder councils and a variety of programs and projects that specialize to maintain traditional cultural areas and their protection. However, the Tribes organize the protection of cultural resource, consultation must be with the Tribal governmental body.

With the 567 federally recognized Tribes in the lower 48 states, there is a unifying and common factor that Tribes share, which is the significance and meaning of the land. The natural and cultural resources are highly respected and an integral part to maintaining their identity. For the CCT, the cultural and historic preservation work is a top priority and will continue to advocate the Section 106 reviews aren't undermined, and ask the FCC to provide fair and careful guidance to the process so that Section 106 reviews continues to be a relevant factor to be considered for future broadband wireless deployment and conduct a

balanced examination of the TCNS process and all its stakeholders, and new amendments to the National Programmatic Agreement (NPA). From our perspective, the joint industry comments indicate a general lack of understanding about tribal sovereignty and the FCC's trust responsibility with Tribes. The Tribe's political status distinguishes themselves apart from other stakeholders in the public participation process of infrastructure investment projects as it relates to consultation. The CCT's good faith effort in creating an efficient online Section 106 review process adheres to the intent of the National Historic Preservation Act¹; it is practical and straightforward, which lessens the burden of the reviews of lengthy documents for the Section 106 reviews, and significantly lessens the response time to conduct the review for the applicant's project. Unfortunately reading the joint comments by CTIA and WIA describes egregious activities and alarming statements which the CCT and more than likely many other Tribes, disagree with and find offensive and questionable. The CCT's Section 106 review process has an impeccable record of timely reviews, professional relationships, and user friendly online platform. Currently, for the macro tower construction projects, the Chippewa Cree Tribe has an average of 16 days response time in our database system. We conducted a review of the total number of review and in the 30-day review period, we have a 93% response rate. In reference to Verizon's NPRM reply comments, "In July 2016 2,450 Verizon sent 2,450 requests. Of the 2,450 requests, CCT received 375 requests. Out of the 375 requests. Of the 323, 93% were reviewed within the 30-day timeframe, 6% were reviewed within the 31 - 60-day timeframe and 1% were reviewed within the 61-120-day timeframe.

¹ National Historic Preservation Act of 1966.

TRADITIONAL KNOWLEDGE

Tribal peoples have never conformed to boundaries created to determine “ownership” because the land and those resources it contains cannot be owned or controlled by any one person or entity. This notion of ‘ownership’ only began once the first colonists arrived and began creating these ‘boundaries’ and forcing Tribes onto their current Reservations. This forced movement still has a lasting effect on Native peoples, but our oral histories are continued to be passed down, describing our ancestral homelands and the cultural areas they contain.

Tribes have a specialized knowledge that anthropologists and other non-Tribal peoples have tried to learn of, but failed to fully grasp or understand of Tribal cultures. It is for these reasons why consultation is vital with the Tribes because we possess the oral history and knowledge on our ancestral lands, not just the reservations that all Tribal Nations have been placed on by the western civilization. The legacy of oral history and knowledge has not been public knowledge, but has been passed through innumerable generations of Tribal peoples living in harmony with the land. This knowledge is alive to this day as it has been since time immemorial.

At no point have Tribal peoples had the opportunity or ability to properly preserve and protect these lands as we do in the present under the NHPA, but that is now being attacked and undermined by industry. Industry must continue to include the Section 106 reviews, NEPA’s environmental impact statements, environmental assessment and archaeology reports with the scientific community, who must work collaboratively with the Tribal communities. The Tribal view has never been considered except for the archaeologist and

their study and their analysis of the Tribes. The CCT would like the FCC and the industry to consider the unique Tribal perspective, how interconnected Tribal people are with the water, plants, animals and the land. This holistic approach that CCT takes upon their consultation research is not just a matter of looking at historical sites but with the area in question. The plants, animals and water also become a major factor in our cultural research, assessments and discussions with our Elders who possess this knowledge.

The comments submitted by various companies express the notion that many Tribes are 'overstepping' their boundaries and increasing their Areas of Interest (AOI). We would like to point out that once Tribes enter the NPS Tribal Historic Preservation Program (THPP), they must identify their ancestral homelands. This is done by examining the treaties the Tribe signed with the United States of America and also the oral histories of our Elders. We would like to also point out that many Tribes, including the Chippewa Cree Tribe, were forcefully removed from a great distance. Our original homelands are in what is now called Pennsylvania.

Because our ancestral lands encompass eleven states, we recognize that there are other Tribes consulting on the same projects that we receive notification on. When we and another one of these Tribes requests a monitor be present during ground disturbing activities, we will defer the project to the closer Tribe. We understand the importance of accelerating wireless broadband, but also want to make sure that our and other Tribe's cultural areas are protected; thus, the need of Tribal monitors.

ADVERSE EFFECT

Just as the private industry has experienced issues, so have Tribes. The CCT has encountered issues in working with the wireless telecommunication industry such as the lack of a timely response, failure to provide adequate information, disregard for Tribes as governmental entities, disregard for the Section 106 process, and the failure to pay for services rendered.

Unfortunately, the CCT conducted twenty-one Section 106 reviews, requesting an on-site monitor to conduct a pedestrian review for the project areas based on the preliminary online review of the applicant's information. Of the twenty-one projects, nine separate industry consultants were contacted through the online database, by telephone, and email. CCT's THPO determined it was necessary to have a monitor review the areas for any cultural resources to be mitigated to avoid a possible adverse effect. Although the THPO sought consultation, construction was performed for the telecommunication projects. The Section 106 review of these projects was not fully completed in a respectful manner nor in good faith due to the applicant's' refusal to consult with the CCT's THPO after the initial online review. The CCT's THPO is expedient in the review process in that there are a few staff trained to examine each project that is submitted onto our online platform (iResponse), which identifies the date and time of the consultant's last entry. In these specific circumstances, the consultant did not follow up with the THPO, and projects had been completed prior to completing the Sec. 106 'meaningful and respectful' consultation. As another recommendation to consider, the FCC's TCNS process should be updated to notify the Tribes when it receives the communication from the applicant, and then notifying the Commission the project is completed or closed. A trigger should be

considered to monitor Tribes' Section 106 process to ensure the consultation requirement was met according to the Section 800.3 through Sections 800.6. Although the applicant received the Tribe's request, they failed to adequately consult and follow up on the monitor requests. The CCT is willing to provide the specific TCNS projects as part of the FCC's evaluation of the Section 106 review process as part of this Docket.

Generally, the CCT has been involved in several projects that were being vacated based on the research and assessment completed by THPO and staff members. In our previous comments, we offered other recommendations to enhance the TCNS to track the outcomes of the Section 106 review process. Below are other examples, where the Section 106 review process was successful and those projects that failed to meet the 'respectful and meaningful' consultation requirement.

Example One

Saco Site – TCNS # 95156

In 2013, a contractor submitted a project to the Chippewa Cree Tribe. The proposed project was south of Saco and was a communications tower. The CCT THPO gave a letter of "Finding of An Adverse Effect", even though consultants found no properties. The THPO and Tribal Elders both went out the proposed site and did a cultural walk through. They found multiple stone circles and a cairn that was a potential gravesite. The archeology report did not report of the potential sites that were found by the Tribe. Shortly after, the site was abandoned due the high cultural properties.

Example Two

FEMA – Lagoon Project

In 2015, a consultation for a FEMA project was proposed to Chippewa Cree Cultural Resources Preservation Department (CCCRPD). A lagoon was being placed on the Rocky Boy's Indian Reservation. The original location was surveyed by the Tribal THPO, Tribal Elder, and Tribal Archeologist. There were cultural sites and medicinal plants located on the proposed location. It was advised to move the site to another location, which was cleared with a tribal monitor present. The project was relocated to a different location.

Example Three

Rock Quarries on Square Butte

In 2004, the Chippewa Cree Tribe presented a rock quarry project to CCCRPD and tribal elders. The project was located on Square Butte. The site is in a very sensitive area. Many Tribes use Square Butte. The elder's even said there was sites and it's sacred. However, the Tribe continued the project and destroyed an area. It was stopped and migrated by the parties.

Example Four

Keystone Pipeline

Although not a TCNS a project, it is a prime example of what can go wrong when the Section 106 process and tribal consultation are not adhered to or considered. In 2014, TransCanada proposed a pipeline. The project went through Montana, North Dakota and South Dakota. TransCanada sent out information about the project to the tribes and invited them into a meeting regarding the project. However, it was not a meaningful consultation as they did not meet one on one with each tribal leadership. The CCT sent the THPO and

Tribal Elders to North Dakota to do their own cultural survey and found 11 additional sites that was not on the original archaeological report given to tribes. These additional sites by the CCT's THPO and the Tribal Elder's notes were not taken into consideration and the project continued. Many sites and burial lands were destroyed in the process. This example shows the importance of consultation and what happens when Tribes are not a part of the process. These are just a few examples from the Chippewa Cree Tribe and completely refutes the industry claims of there being no issues that affect tribal historical or cultural properties. The Section 106 process was put in place to prevent these issues from destroying tribal historical properties and it has been effective for Tribes, Industry, and the FCC.

GUIDANCE, COLLABORATION AND COMMUNICATION

As previously expressed, the CCT is ready to build upon and maintain strong, working government-to-industry relationship with the FCC and collaborate to seek solutions as a committed partner in resolving issues expressed in the NPRM/NOI. We concur with comments made by the Advisory Council of Historic Preservation submitted on June 15, 2017 that state:

“The ACHP recognizes and appreciates FCC's ongoing outreach to State Historic Preservation Officers, Indian tribes, and the ACHP to discuss questions raised in the NPRM and NOI. The ACHP remains concerned that our views were not solicited prior to the issuance of the NPRM. Furthermore, the ACHP notes that data which might serve to quantify and accurately describe the successes and challenges FCC may be encountering in carrying out environmental reviews has not been systematically and routinely gathered by FCC. Accordingly, we would urge FCC to

undertake an effort to compile and review such information before concluding what improvements might be needed of infrastructure development and simultaneously fulfill its obligations under Section 106. We welcome the opportunity to work with FCC, Industry, and other Indian Tribes improve and grow on the previous work of the TCNS Program. “2.

At many meetings, conference calls, and written comments, CCT has asked to have FCC, industry and Tribes meet regularly to improve and address matters for the Section 106 review process. It is to the disadvantages of Tribes the issues are raised in the NPRM/NOI formal process. The expedited review doesn’t allow the complete understanding on FCC’s role, its current review process, and fulfill the NPA’s requirement to conduct an annual meeting, not with only Tribes but industry partners to facilitate planning, issue identification, policy recommendations, cultural and industry trainings. Successful business and tribal relationships are based on mutual respect, active listening, and ongoing communication to understand the outcomes and objectives with each other which are not mutually exclusive.

Although the FCC conducts their Annual Tower Training Workshop, this event does not substitute for the type of consultation and exchange of information, ideas, and topics that is greatly needed and expressed in the NPA. During this regulatory process, we have asked for industry participants to provide a presentation on the 5G wireless communication deployment. Sadly, not one industry participant, trade association, or consultants offered an overview of the new emerging wireless spectrum, or the internet of things (IOT). The knowledge of the industry came from

² Comments of the Advisory Council Historic Preservation on Docket 17-79 submitted June 15, 2017

trade press, links from recent comments industry referenced, media interviews and NATHPO webinars, and one FCC presentation which is not from the industry's perspective. The ACHP is accurate in their assessment and encourage a rigorous review.

The CCT has been diligently working with the FCC and industry by utilizing a consultation database (iResponse) to help expedite the review process of the TCNS projects. Weekly, the database allows industry, or those contracted by them, to initially upload the project location, consultant name, and tower owner's name, however often no attachments are provided until the Tribe requests them. On occasion, a project will remain on a database due to lack of documentation from the consultant needed for the review process. To provide a recent example, a TCNS project was uploaded on April 18, 2017 with the preliminary project information. On April 24th, the Tribe replied on the online platform (iResponse) to the applicant requesting additional information to conduct the review. On June 27th, the applicant responded and uploaded a map. This type of delay from consultants is not uncommon for Tribes. Clearly, in this instance, it wasn't the Tribe's actions that caused an "excessive delay" but the lack of follow up by the consultant to provide the necessary information to conduct the review. It is unknown how the industry determined the criteria for the amount of time, and how they tracked their consultant's communications with numerous Tribes but for the CCT's understanding, more than often the fault has been biased toward the Tribes. We agree further examination should be conducted by the FCC, in the current process, and interface with consultants and Tribes. CCT's recommendation that the initial

date of the entry of the TCNS project date isn't a fair date to establish the "shot clock", if the consultant has not provided the necessary documents for Tribes to complete a thorough review of the information. As a recommendation, applicants should begin the process FCC should provide further guidance on the web portal for all the requirements for the online submission.

Each project that the CCT receives on the database is viewed by trained personnel and is issued a letter stating that there is either 'No adverse effect', 'No cultural properties', or 'Tribal Monitor Request', depending on the location.

5G BATCHING STANDARDS

The use of batching is becoming prevalent in the TCNS process for 5G deployment. Tribes need to be consulted on the batching criteria. We suggest FCC reexamine the forms to assess what changes are necessary specifically for small-cell deployment and DAS infrastructure deployment. FCC guidance addressing considerations for number of facilities in a "batch", the criteria, and other criteria the type of equipment installed, new tower construction on undistributed ground, new pole construction on non-disturbed and disturbed ground, pole replacement on disturbed ground and non-disturbed ground, emergency communication waivers, and new procedural changes to the existing process. It warrants further discussion if an amendment(s) will be considered to the NPA. The CCT's THPO is not opposed to the discussion on the use of batching with regards to small cell and DAS infrastructure deployment. Consultants are contacting Tribes separately to negotiate agreements to expedite the Section 106 reviews. Applications include multiple equipment types, pole attachments, new pole, relocations etc. It is difficult to assess which individual project would require a Section 106 review, while others, if the work performed is a tear

down of existing equipment on an existing pole with no ground disturbance activity.

CONCLUSION

The CCT is in support of the growth of the wireless communications infrastructure. Our reply comments provide additional details how the Section 106 reviews are performed by the Tribe and raise issues we experienced that need to be addressed. The CCT will continued to be engaged in regulatory process and will collaborate with the FCC, industry and its consultants to work toward streamlining the 5G wireless infrastructure deployment, keep in mind we will not sacrifice or minimize our ability to conduct cultural resources review and Industry continuing to adhere to the consultation process. Thank you for your consideration of these comments.

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(Provided verbal approval)
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CC: Bambi Kraus, President, National Association of Tribal Historic Preservation Officers